IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 909 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SALUBHAI SHAKRABHAI BALEVIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 909 of 1994
MR KR RAVAL for Petitioner No. 1
Mr.A.J.Desai, learned A.P.P.for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant-original accused, by filing this appeal under Sec. 374(2) of the Criminal Procedure Code (to be referred to as the Code for short), has challenged the judgment and order dated August 19, 1994 of the learned Addl. Sessions Judge Sabarkantha at Himmatnagar in Sessions Case no. 32 of 1994 by which the appellant was convicted under Sec. 302 of the Indian Penal Code (to be referred to as I.P.C. for short) for causing the murder of his wife Naniben and sentenced to undergo rigorous imprisonment for life and fine of Rs.500/- in default rigorous imprisonment for six months.

2. The brief facts of the prosecution case are as under : P.W. 1 Rajubhai Nanjibhai was residing at village Dholiya Taluka Idar District Sabarkantha. His sister Naniben (since deceased) was married with the appellant Salubhai prior to twenty years of the date of the incident. Naniben had given birth to one son Lalo and two daughters Jita and Kailash out of the wedlock. On December 5, 1993 the appellant, his wife Naniben, and his son Lalo had gone to do labour work at the well of the ownership of the complainant p.w. 1 Rajubhai. The appellant was entrusted the labour work of digging of well. Deceased Naniben was helping the appellant of digging the well. Around 11.00 a.m. Lalo p.w. 3 who is the son of the appellant accompanied by p.w. 2 Kugaha Asari came to the complainant and disclosed that the appellant had demanded Rs.10/- from the deceased for buying bidis and matchbox. That when the deceased refused to pay the money, the appellant had with the aid of spade inflicted three successive blows on the head of the deceased and had thrown her body in the well. The incident was witnessed by p.w. 2 Kugaha and p.w. 3 son of the appellant Lalji @ Lalo. The complainant along with his brothers Kamji and Nagji went to the well where the incident had taken place. They saw that the deceased Naniben had expired. Thereafter the complainant had contacted the leading persons of the village. One Laxmanbhai Sukabhai who is the leading member of the village had arrived on the next day. The complainant informed said Laxmanbhai about the incident. The complainant was accompanied by Laxmanbhai to Vadali Police Station where the FIR came to be lodged by the complainant against the appellant for causing the murder of his sister Naniben. The said FIR was registered as CR 93/93 of Vadali Police Station. P.W. 8 P.S.I. Badaji Jalvaji who was at the relevant time discharging his duties as Addl.P.S.I. at Vadali Police Station took over the investigation and went to the place of the incident and had made arrangements to take out the dead body of

deceased Naniben from the well around 11.30 to 12.00 hrs. Inquest of the dead body was held, and panchanama was drawn of the place of the incident. Controlled earth was collected in two tin boxes. The muddammal spade with which blows were inflicted on the head of the deceased by the appellant was also recovered. The muddammal spade was stained with blood. Accordingly, all the incriminating articles were seized by P.S.I. Badaji under a panchanama. P.S.I. Badaji had thereafter recorded the statements of various witnesses and had sent the dead body of deceased Naniben for post-mortem. Map of the scene of the offence was prepared on December 8, 1993 at 15.30 hrs. The appellant came to be arrested under an arrest panchanama. All the incriminating articles were sent by P.S.I. Badaji to Forensic Science Laboratory (F.S.L. for short) for analysis. On the receipt of the post-mortem report and the report of the F.S.L. and on the completion of the investigation, P.S.I. Chavda submitted the chargesheet against the appellants for offence under Sec. 302 of the I.P.C. in the court of learned Judicial Magistrate (First Class), Idar which came to be registered as Criminal Case no. 394 of 1994. As the offence under Sec. 302 of the I.P.C. is exclusively triable by the Court of Sessions, the learned Judicial Magistrate committed the case to the Court of Sessions District Sabarkantha at Himmatnagar wherein it came to be numbered as Sessions Case no. 32/94.

3. The charge exh. 4 was framed against the appellant for offence under Sec. 302 of I.P.C. The charge was read over and explained to the appellant wherein he pleaded non guilty and claimed to be tried.

4. The prosecution to prove the charge against the appellant examined i) p.w. 1 Complainant Rajubhai Nanjibhai exh. 7, ii) p.w.2 eye witness Kugahabhai Chhaganbhai Asari exh. 9, iii) p.w. 3 Lalji @ Lalo Saluji exh. 10, iv) p.w. 4 Panch Kodarbhai Adherabhai exh. 11, v) p.w. 5 Laxmanbhai Sukaji (Panch of the arrest panchanama of the appellant) at exh. 18, vi) p.w. 6 Gobarbhai Kalabhai (uncle of the complainant who had given labour work of digging the well to the appellant) at exh. 21, vii) p.w. 7 Dr.Rameshbhai Khemabhai Parmar (Medical Officer of Chorivada Primary Health Centre who performed the post-mortem on the body of Naniben) exh. 24 and viii) p.w. 8 Badaji Jalvaji Investigating Officer at exh. 27. The prosecution produced documentary evidence such as FIR lodged by p.w. 1 Rajubhai at exh. 8, panchanama of the place of the incident at exh. 17, arrest panchanama of the appellant at exh. 19, inquest

panchanama at exh. 20, map of the place of the incident at exh. 23, post-mortem notes at exh. 25, certificate issued by the Medical Officer with regard to the cause of death at exh. 26, report of F.S.L. at exh. 27 etc. to prove the case against the appellant.

5. The learned Addl. Sessions Judge on the appreciation of the oral as well as documentary evidence and after hearing the arguments advanced by the learned A.P.P. and the learned counsel for the appellant held that the prosecution has proved that Naniben died a homicidal death. That the case of the prosecution had not become weak due to filing of late FIR. That the prosecution had failed to prove that the appellant had demanded Rs.10/- for the purchase of bidis and matchbox and the deceased had refused to pay the amount. That the prosecution had proved that the appellant had inflicted blows with muddammal spade on the head of the deceased as a result of which the deceased had fell down and thereafter the appellant had thrown her in the well. That the prosecution had proved that the deceased had not fell down in the well as she slipped while digging and doing labour work in the well. It was further held that the deceased had not sustained injuries due to the fall in the well and as her head had hit with the stones of the well. On the basis of above referred to conclusions, the learned Addl. Sessions Judge convicted the appellant for the offence under Sec. 302 of I.P.C. and sentenced him to suffer rigorous imprisonment for life and pay fine of Rs.500/- in default rigorous imprisonment for six months which has given rise to filing of this appeal by the appellant.

6. The learned advocate Mr.K.R.Raval for the appellant and learned A.P.P.Mr.A.J.Desai for the State of Gujarat has taken us through the entire record and proceedings of the appeal. The counsel for the appellant has submitted that the case against the appellant was not proved beyond doubt by the prosecution as the child witness p.w.3 Lalji @ Lalo who is the son of the appellant had become hostile and had not supported the case of the prosecution that when the deceased refused to pay the amount of Rs.10/- to the appellant for purchase of bidis and match box the appellant got enraged and gave successive blows with the spade on the head of the deceased and thereafter thrown her in the well. Counsel for the appellant submitted that the injuries sustained by the deceased Naniben were possible by her slipping in the well and sustaining injuries as her head hit with the stones in the well. In the alternative, learned counsel for the appellant submitted that as the deceased had

refused to pay the amount of Rs.10/- to the appellant he got enraged and had inflicted blows with spade on the head of the deceased and the appellant had no intention of causing the murder of the deceased and therefore the case would not fall under Sec. 302 of I.P.C. but would fall under Part I or II of Sec. 304 of I.P.C. and therefore the sentence imposed on the appellant should be reduced suitably and the appeal be allowed accordingly.

7. Learned A.P.P.Mr.A.J.Desasi on the other end submitted that the evidence of p.w. 2 Kugaha who had witnessed the incident had proved beyond doubt that the appellant inflicted three successive blows with spade on the head of the deceased which were in the ordinary course of nature sufficient to cause the death and had thereafter thrown her body into the well. Learned A.P.P. further submitted that the medical evidence had also supported the ocular version of the eye witness. That the appellant had selected the vital portion for inflicting blows with spade which showed that the appellant had intention to cause the murder of the deceased. Learned A.P.P. at the end submitted that the charges against the appellant was proved beyond reasonable doubt and therefore the appeal be dismissed and the conviction and sentence be confirmed.

8. The evidence of p.w. 7 Dr. Rameshbhai Khemabhai Parmar exh. 24 and the post-mortem notes prepared by him at exh. 25 prove beyond doubt that the deceased Naniben had died a homicidal death because of the injuries inflicted on her head as noted in col. 17 of the post-mortem notes. In the oral testimony also, Dr.Parmar deposed that the injuries found on the head of the deceased were possible when the blows with blunt portion of the spade was inflicted on the head. He further deposed that the injuries found on the head of the deceased were sufficient in the ordinary course of the nature to cause the death. The evidence as discussed above, establishes beyond doubt that the deceased Naniben died a homicidal death and therefore the finding recorded by the learned Addl.Sessions Judge to that effect is confirmed.

9. Learned counsel for the appellant has submitted that the incident in question had taken place around 13.00 hrs. on December 5, 1993 whereas FIR exh. 8 was lodged by p.w. 1 Rajubhai at Vadali Police Station at 9.30 a.m. on December 6, 1993. Counsel for the appellant submitted that the FIR was filed late and therefore the case of the prosecution becomes doubtful and the benefit of doubt should be extended in favour of

the appellant. In our view the submission of the learned counsel for the appellant deserves to be rejected. P.W. 1 Rajubhai who happens to be brother of the deceased in his oral testimony deposed that he was informed of the incident by p.w. 2 Kugahabhai and the son of the appellant Lalo around 1.30 p.m. He deposed that when he came to know of the incident he went to the place of the incident and found that the dead body of his sister was lying in the well. He deposed that after his visit to the place of the incident, they had tried to contact leading persons of the village but one of the leading persons namely Laxmanbhai was not present on that day at the village. As per his say said Laxmanbhai returned to the village on the next day. His case is that as he was an illiterate person, he could not lodge the complaint on the same day but after the return of Laxmanbhai he had gone in the company of said Laxmanbhai to Vadali Police Station to lodge the complaint. In the cross-examination he gave the explanation that he was an illiterate person and he was under the impression that as the incident took place on Sunday due to holiday his FIR may not be registered. The circumstances as emerging on the record of this case in our view does not affect or weaken the case of the prosecution on the ground that as the FIR was filed late there were chances of the appellant being falsely involved in the present case. The incident was witnessed by p.w.2 Kugahabhai who in terms had deposed that the appellant had inflicted spade injuries on the head of the injuries and he was the person who had thrown the deceased in the well. Right from the beginning the appellant was named as assailant who had inflicted spade blows on the deceased and merely because the FIR was lodged after a couple of hours it does not affect the veracity of the prosecution case.

10. The evidence of p.w. 2 Kugahabhai exh. 9 proves beyond doubt that his house was situated adjoining to the place of the incident. He deposed that at the time of the incident he was present there and he had seen three persons quarreling with each other. The said three persons were deceased Naniben, appellant and their son Lalo (p.w.3). He deposed that the appellant had inflicted blows with blunt portion of the spade on the head of the deceased and thereafter had thrown her body in the well. He further deposed that the appellant had also tried to attack his son Lalo but as he has raised cries and had run away he had followed him to the p.w. 1 complainant Rajubhai. He deposed that soon thereafter he had informed p.w. 1 Rajubhai about the incident and at that time p.w. 3 Lalo was also accompanying him. The witness further deposed that he had returned to the place

of the incident accompanied by p.w. 1 Rajubhai and when they saw in the well they found that the deceased was bleeding profusely due to injuries on the head and had expired. He also deposed that the appellant was soon thereafter running towards hills. The witness was searchingly cross-examined but nothing was brought out during the cross-examination to dislodge the version as deposed in the examination-in-chief.

11. The evidence of eye witness p.w. 2 Kugahabhai is fully supported by the evidence of p.w. 1 Rajubhai. As per the evidence of p.w. 1 Rajubhai, p.w. 2 Kugahabhai accompanied by son of the appellant Lalo had come to his house around 1.30 a.m. on December 5, 1993 and had informed about the incident wherein the appellant had inflicted fatal blows with blunt portion of the spade on the head of the deceased and thereafter had thrown her body in the well. The evidence of p.w. 6 Gobarbhai Kalabhai exh. 21 corroborates the version of the prosecution that on the day of the incident the appellant was doing labour work of filling the well by digging the earth in the well belonging to him. P.W. 3 after the incident had gone to the house of p.w. 6 Gobarbhai and informed that the appellant had killed his mother. After the information was given by p.w. 3 Lalo to p.w.6 he had gone to the well and had found that the deceased was lying dead in the well. The evidence of p.w. 6 Gobarbhai thus proves that he had entrusted the labour work of filling the well with earth to the appellant and the appellant and his wife Naniben were doing the labour work on the well on the day of the incident. The house of p.w. 6 was situated at a distance of 300 mtr. from th well and therefore his evidence becomes material for deciding the fact that on the day of the incident, the appellant was doing work of digging earth in the well. The presence of the appellant at the place of the incident is also established by the evidence of p.w.6 Gobarbhai who had immediately gone to the place of the incident and had seen the dead body of the deceased Naniben lying in the well.

12. In our view, the evidence of p.w. 1 & 2 proves beyond reasonable doubt that the appellant is the person who had inflicted fatal blows with blunt portion of the spade on the head of the deceased and when the deceased fell down, he had thrown her body in the well. The appellant had the knowledge and intention to cause the murder of his wife Naniben. The appellant had selected a vital part of the body to inflict fatal blows with muddammal spade. The appellant had acted cruelly while giving fatal blows and had not shown any mercy to the

deceased who was his wife. Therefore, all the ingredients of Sec. 300 are fully established. We, therefore, confirm the finding of the learned Addl.Sessions Judge that the appellant had caused the murder of his wife Naniben and had committed the offence under Sec. 302 of I.P.C. Consequently we also confirm the sentence imposed on the appellant by the Learned Addl.Sessions Judge for rigorous imprisonment for life and fine of Rs.500/- in default rigorous imprisonment for six months.

13. The submission of the learned counsel for the appellant that the present case would not fall under Sec. 302 I.P.C. but would fall under Part I or II of Sec. 304 I.P.C. has no merits and deserves to be rejected. As noted earlier, the appellant had knowledge and intention that by inflicting blows with blunt portion of the muddammal spade on the head of the deceased, the resultant effect would be that the deceased would meet with death. The appellant had selected vital part of the body to inflict the blows. The appellant had acted cruelly and had shown no mercy on his wife. There is no alternative but to hold that the appellant had full knowledge and intention to cause murder of his wife Naniben. Therefore, in our view, this is a clear case of murder as defined under Sec. 300 of I.P.C. and no exception can be made that it would not fall under the offence of Sec. 302 of I.P.C.

14. As a result of the foregoing discussion, we do not find any merits in this appeal and is hereby dismissed. The conviction of the appellant under Sec. 302 of I.P.C. and the sentence imposed on him for rigorous imprisonment for life and fine of Rs.500/- in default rigorous imprisonment for six months is hereby confirmed. Muddammal be disposed of in terms of the direction contained in the impugned judgment.

(M.H.KADRI, J)

(SHARAD D DAVE, J)

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